*** THE HON'BLE SRI JUSTICE V.V.S.RAO**
AND
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

+ WRIT PETITION Nos. 1241, 3841, 11731, 11732, 11733, 14138, 23892, 4660 AND 26029 of 2005;
462, 13775, 13800, 18900, 23097, 26412, 26417, 21632 OF 2006; AND
1427, 1959, 2232, 2268, 1620, 2688, 3951, 4258, 4334, 4494, 4854, 3642, 6004 AND 6316 OF 2007

% Dated 09.08.2007

Kurapati Lakshmaiah, S/o.Late Appaiah,
and others.

… Petitioners

VERSUS

$ Additional Agent to Government and Project Officer,
ITDA, Bhadrachalam, Khammam District,
and others.

… Respondents.

! Counsel for Petitioners: Sri R.Kameswar Rao
Sri P.Vishnuvardhan Reddy
Sri P.V.Ramana
Sri P.Veera Reddy
Sri K.Rathanga Pani Reddy
Sri Badana Bhaskara Rao
Sri K.Venkatesh

^Counsel for Respondents: GP for Revenue
GP for Social Welfare
Sri K.Bala Gopal
Sri M.Rajamalla Reddy
Sri V.Raghu
Sri Kowturu Vinaya Kumar

GIST:

>HEAD NOTE:

? Cases referred

1. AIR 1970 SC 951 (para 25)
2. 1971 (2) AnWR 123
3. AIR 1993 AP 312 (FB)

THE HON'BLE SRI JUSTICE V.V.S.RAO
AND
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION Nos. 1241, 3841, 11731, 11732, 11733, 14138, 23892, 4660 AND 26029 of 2005;
462, 13775, 13800, 18900, 23097, 26412, 26417, 21632 OF 2006; AND
1427, 1959, 2232, 2268, 1620, 2688, 3951, 4258, 4334, 4494, 4854, 3642, 6004 AND 6316 OF 2007

Dated:09.08.2007

Between:

Kurapati Lakshmaiah, S/o.Late Appaiah,
and others.

...Petitioners

and

Additional Agent to Government and Project Officer,
ITDA, Bhadrachalam, Khammam District,
and others.

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO
AND
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION Nos. 1241, 3841, 11731, 11732, 11733, 14138, 23892, 4660 AND 26029 of 2005;
462, 13775, 13800, 18900, 23097, 26412, 26417, 21632 OF 2006; AND
1427, 1959, 2232, 2268, 1620, 2688, 3951, 4258, 4334, 4494, 4854, 3642, 6004 AND 6316 OF 2007

COMMON ORDER: (Per Hon'ble Sri Justice V.V.S.Rao)

Introduction and Background

The petitioners in this batch of writ petitions are residents of different villages in either Khammam District or East Godavari District in State of Andhra Pradesh. Some Taluks/Mandals in these two Districts are scheduled areas having been statutorily notified as such long back.

All the petitioners do not belong to scheduled tribes (in this order they are referred to as non-tribals). They own agricultural lands in their villages. They allege that either they or their ancestors or predecessors in title purchased from other non-tribals under agreements of sale and other transfer documents. In some cases, they also claim that they were granted ryotwari patta under relevant law.

The jurisdictional Special Deputy Collector (Tribal Welfare) (SDC, for brevity) initiated action under Section 3(2) of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation No.I of 1959), as amended by Regulation I of 1970 (the Regulation, for brevity). All the petitioners were ordered to be ejected from the respective lands and land in their possession was directed to be restored to the Government or persons belonging to scheduled tribes. The petitioners then filed appeals under Section 3(3)(a)(ii) of the Regulation before the concerned District Collector and Agent to the Government. Agent to the Government transferred the cases to Project Officer of Integrated Tribal Development Agency (ITDAs), who is Additional Agent to the Government. In some of the cases, Additional Agent dismissed the appeals upholding the orders of SDC. In some cases, action was dropped by original authority, but on appeal by the tribals or Special Deputy Tahsildar (SDT, for brevity), Additional Agent ordered notice of hearing. In some cases, Additional Agent declined to condone the delay in filing appeal or declined to grant stay of orders of original authority. A writ petition is also filed challenging the order of the Agent transferring the case to Additional Agent. In this varied background, all the petitioners filed these writ petitions challenging Notification of the Government in G.O.Ms.No.193, Revenue (SCR.I) Department, dated 17.04.2002, whereby and where under Project Officers, ITDAs are designated as Additional Agents.

Facts in brief

Taking W.P.No.14138 of 2005 as an illustrative case, the facts may be noticed. The petitioner is in possession of land admeasuring Acs.2.04 guntas in survey No.312 situated at Janampet Village of Pinapaka Mandal of Khammam district. He claims possession of the property from 1962, through his grandfather, Devuni Subbaiah @ Devuni Subba Reddy, whose name is allegedly incorporated in revenue accounts like 10(1) Adangals, Pahani Patrika for 1962-1963. Korsa Laxmaiah (fourth respondent in W.P.No.14138 of 2005) gave a complaint to SDC, Paloncha, alleging that the petitioner encroached his lands to an extent of Acs.3.00 in survey Nos.312 and 313 and prayed for restoration of the same. SDC, Paloncha, dismissed the said L.T.R.Case on 16.07.1992, recording finding that there is no transfer of land contrary to the

Regulation. Laxmaiah then filed appeal before the Additional Agent, Bhadrachalam in C.M.A.No.12 of 2004. The same was allowed directing the Mandal Revenue Officer, Pinapaka (MRO) to take possession of the land from petitioners and assign it to Laxmaiah. Therefore, the writ petition is filed challenging the Government Notification vide G.O.Ms.No.193 and for a writ of Mandamus invalidating the order of Additional Agent in C.M.A.No.12 of 2004.

In W.P.Nos.11731, 11732, 11733, 14138, 23892, 4660 and 26029 of 2005; 462 and 13775 of 2006 also, the Government Notification along with the orders of the Additional Agent are impugned.

In W.P.Nos.13800, 18900, 23097, 26412, and 26417 of 2006; 1427, 1959, 2232, 2268, 1620, 21632, 2688, 3951, 4258, 4334, 4494, 4854, 3642, 6004 and 6316 of 2007, the Civil Miscellaneous Appeals filed either by SDT or the concerned tribals are challenged even though final orders are not passed by Additional Agent. In this group, the facts in W.P.No.13800 of 2006 filed by six (6) residents of Induripet Village, Devipatnam Mandal in East Godavari District may be noticed. One Chandrupatla Hanumantha Rao and Mirthivada Subba Reddy purchased an extent of Acs.9.38 in R.S.No.5 (new survey No.309) under a registered sale deed, dated 23.08.1937 allegedly after obtaining permission from Special Agent to Government. The predecessors of the petitioners purchased land from Hanumantha Rao under registered sale deeds and sixth petitioner claims to be in possession of Acs.1.50 being grandson of Hanumantha Rao. In 1976, Mirthivada Parimi Reddy filed a petition before the Special Assistant Agent, against the vendor for ejectment. The said case being S.R.No.159 of 1976 was dismissed by Special Assistant Agent on 06.05.1996, holding that the transaction between non-tribals and non-tribals before 1959 is valid. Again in 1980, SDT filed L.T.R.P.No.314 of 1980 against grandfather of third petitioner. The same was dismissed on 19.10.1991. Yet again in 2004, SDT filed L.T.R.P.No.65 of 2004 alleging that the petitioners are in possession of land in contravention of the Regulation. The SDC dismissed these applications on 26.07.2004. Against the said order, SDT, Devipatnam, filed C.M.A.No.93 of 2005 before the Additional Agent to Government, East Godavari District. Questioning the jurisdiction of Additional Agent to entertain appeal, the petitioners filed the writ petition also challenging the Government notification conferring powers of Additional Agent on the Project Officer.

The Secretary to Government of Andhra Pradesh in Social Welfare (Tribal Welfare) Department filed counter affidavit in W.P.No.14138 of 2005, which is treated as counter affidavit in all the cases. The issue of the impugned notification is justified under Regulation I of 1959 as amended by Regulation I of 1970 as well as

Paragraph 5(1) of Fifth Schedule to Constitution of India (hereafter called Fifth Schedule). A reference is also made to Section 3 of A.P. District Collector's Powers (Delegation) Act, 1961 (hereafter called, Delegation Act) and the Notification issued thereunder vide G.O.Ms.No.77, dated 22.01.1978.

Submissions of Petitioners

Learned Counsel for petitioners M/s.R.Kameswara Rao, P.V.Ramana and B.Bhaskara Rao, made the submissions to the following effect. The impugned notification in G.O.Ms.No.193, which is purportedly issued under Paragraph 5(1) of Fifth Schedule read with Section 3 of Delegation Act, is illegal and unconstitutional. Section 3 of Delegation Act empowers State Government to delegate the powers of District Collectors only in respect of laws made by State Legislature with reference to various legislative matters enumerated in List-II or List-III of Seventh Schedule to Constitution of India (hereafter called, Seventh Schedule). Regulation I of 1959 was made by the Governor in accordance with Paragraph 5(2) of Fifth Schedule and therefore the impugned notification is illegal and *ultra vires*. Regulation I of 1959 empowers the Government to designate only one "Agent to Government" (Agent, for brevity) and therefore there is no law empowering the Government to delegate powers to Project Officer, ITDA, as Additional Agent for the purpose of the Regulation. Unless and until consent of the President of India is obtained as required under Paragraph 5(4) of Fifth Schedule, the impugned notification cannot be enforced. The power of the Governor under Paragraph 5(1) of Fifth Schedule can be exercised only in the event of there being existing law made by the State Legislature. Unless and until the procedure contemplated under Paragraphs 4 and 5 is followed, the impugned notification is unsustainable. Lastly, the District Collector has no power to transfer appeals pending before him to Project Officer, ITDA.

Submissions of Respondents

Sri K.G.Kannabhiran, learned Senior Counsel, and Sri D.S.N.V. Prasad Babu, learned Government Pleader for Social Welfare, support the impugned G.O. as well as the orders passed by the District Collectors of East Godavari and Khammam Districts, in transferring the pending appeals to Project Officers of ITDA, who are now designated as Additional Agents for the purpose of the Regulation. Summary of their argument is as follows. All laws made by Parliament and State Legislature would apply to scheduled areas unless the Governor notifies under Paragraph 5(1) of Fifth Schedule that such law shall not apply or

such law shall apply with certain modifications. While issuing a notification under Paragraph 5(1) of Fifth Schedule by the Governor, the Constitution does not require the assent of the President of India, which is only made mandatory in the case of Regulation made by the Governor for peace and good government of scheduled areas in the State. By impugned notification the Governor virtually applied Section 3 of Delegation Act and ordered that the powers of Agent under Regulation I of 1959 as an Additional Agent. To that extent Delegation Act (Act No.XXXII of 1961) has been modified by the Government of Andhra Pradesh and the same is valid. Under Paragraph 2 of Fifth Schedule, the executive power of the State extends to scheduled areas in the State and therefore it is always permissible for the Government to notify officers who can act as Agents in scheduled areas. Under Section 2(b) read with Section 8 of the Regulation, it is competent for State to designate Project Director of ITDA as Additional Agent and there is no bar to do so. The impugned G.O.Ms.No.193 is only modification of G.O.Ms.No.19 and without questioning the latter, the petitioners cannot maintain the challenge to G.O.Ms.No.193.

Points for Consideration

The background of cases and rival submissions give rise to following points for consideration.

(1) Whether a notification issued by the Governor of State under Paragraph 5(1) to Fifth Schedule to Constitution of India shall have no effect until assented by the President of India?

(2) Whether Section 3 of the District Collector's Powers (Delegation) Act, 1961 (Act No.XXXII of 1961) would not apply to Regulation made by the Governor under Paragraph 5(2) of the Constitution of India?

(3) Whether the Government of Andhra Pradesh cannot designate Project Director, ITDA, as Additional Agent to Government in Scheduled Areas?

(4) Whether the District Collector/Agent to Government is not entitled to transfer cases pending before him to Additional Agent to Government (Project Director, ITDA)?

In Re point No.1

Part X of Constitution of India deals with scheduled and tribal areas. Article 244(1) is to the effect that the provisions of Fifth Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in the States other than the States of Assam,

Meghalaya, Tripura and Mizoram. As per Article 244(2), the provisions of VI Schedule apply to the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Fifth Schedule to Constitution of India is titled as "Provisions as to the administration and control of Scheduled areas and Scheduled tribes". It contains Parts A, B, C and D. Part C deals with the Presidential declaration of certain areas as scheduled areas and part D deals with amendment of Fifth Schedule. Part A contains three (3) Paragraphs. As per Paragraph 2, subject to provisions of Fifth Schedule, executive power of State extends to scheduled areas in the State. Paragraph 3 *inter alia* provides that the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas. Part B contains two Paragraphs. Paragraph 4 deals with tribes advisory council, and Paragraph 5 contains five sub-Paragraphs. It is relevant and reads as under.

> **5. Law applicable to Scheduled Areas:-** (1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.
>
> (2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.
>
> In particular and without prejudice to the generality of the foregoing power, such regulations may-
>
> (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
>
> (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
>
> (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.
>
> (3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.
>
> (4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.
>
> (5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted

such Council.

A reading of Paragraph 5(1) shows that (i) all Acts made by the Legislature of the State or Parliament shall apply to the scheduled areas; (ii) it is competent to the Governor to direct that any such Act shall not apply to scheduled areas or any part of scheduled area;
(iii) the Governor may direct that an Act or Parliament or State Legislature shall apply to a scheduled area or part thereof in the State subject to such exceptions and modifications as may be specified; and (iv) the Governor by public notification may prohibit enforcement of a law or enforcement of a law with modifications either with prospective or retrospective effect.

That all laws made by State Legislatures and Parliament would automatically apply to schedule areas would become clear by reference to Government of India Act, 1935 (1935 Act, for brevity) which is repealed by Article 395 of Constitution of India. Section 91 of 1935 Act empowered Government of India to declare certain areas as excluded areas and/or partially excluded areas. Section 92 of 1935 Act provides for administration of excluded areas and partially excluded areas. The same reads as under.

> **92. Administration of excluded areas and partially excluded areas:-**
>
> (1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act, of the Federal Legislature, or of the Provincial Legislature shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.
>
> (2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or any existing Indian Law, which is for the time being applicable to the area in question.
>
> Regulations made under this sub-section shall be submitted to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this part of this Act respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.
>
> (3) Omitted.

A plain reading of the above provision would reveal the position

under 1935 Act as under. Though it is within the province of the Sovereign to declare an excluded area or partially excluded area, the executive Authority of the Province extends to such excluded or partially excluded areas. But the Act made by Federal Legislature or Provincial Legislature shall not apply to excluded or partially excluded areas unless the Governor by public notification directs that it shall apply (See **Ram Kirpal v State of Bihar**[1]). Under Section 92(2) of 1935 Act, it is only the Regulations made under subsection (2) of Section 92 that require the assent of the Governor General and not the notification issued by the Governor under Section 92(1) of 1935 Act.

Section 92 with modifications was enacted as Paragraph 5 in Fifth Schedule. Insofar as Section 92(1) is concerned, a drastic departure is made, as noticed supra. As per Paragraph 5(1), laws made by the Parliament or State Legislatures would apply to scheduled areas (erstwhile excluded or partially excluded areas) unless the Governor of the State says that it does not apply. Under 1935 Act, Governor had to say the law of Parliament or State Legislature applies and under Indian Constitution, Governor has to say law of Parliament or State Legislature shall not apply. This has bearing on the question whether assent of the President of India is required or not, when a public notification is issued under Paragraph 5(1) in Fifth Schedule.

Paragraph 5 of Fifth Schedule contains two distinct parts. Paragraph 5(1) is the first part and sub-Paragraphs 2 to 5 forms second part. The first part enables and empowers the Governor of the State to direct by notification that a Law of Parliament or State Legislature shall not apply; nothing more or nothing less. Under Paragraph 5(1) itself the Governor can direct that a Law of the Parliament or the State Legislature shall apply to Schedule area subject to exceptions and modifications as he may specify in the notification. To this limited extent, the Governor enjoys the power to modify Law in its application to Schedule area. Even when the Governor directs that a law applies with such exceptions and modifications, what is required is only a Notification and not a Regulation. Paragraph 5(1) nowhere employs 'Regulation' but only uses the term 'Notification'.

Sub-Paragraphs (2) to (5) of Paragraph 5 of Fifth Schedule form a distinct part as mentioned supra. These deal with the power of the Governor to make Regulations for 'peace and good government of the Schedule areas' and apart from this general power, it is competent for the Governor to make Regulations prohibiting or restricting transfer of land among members of scheduled tribe or others, regulating allotment of land to members of scheduled tribes and regulating money lending business by persons who give money to members of scheduled tribes. Thus, Paragraph 5(2) confers powers on the Governor, which are ordinarily

exercised by the State Legislature or in the absence of legislation by Executive. As the powers exercised by the Governor in making Regulations, *prima facie* deal with fundamental freedoms guaranteed by Article 19 as also the provisions in Part XIII (Trade, Commerce within the territory of India), the Constitution requires all Regulations made by the Governor under Paragraph 5(2) to be submitted to the President and not to be enforced until he gives assent to such Regulations. Apart from obtaining assent of the President, the Governor is also required to consult the Tribes Advisory Council constituted under Paragraph 4 of the Fifth Schedule. That Regulations made in Paragraph 5(2) only require the assent of the President becomes clear by reference to Section 92(2) of 1935 Act, which says that Regulations made under sub-section (2) of Section 92 requiring assent of the Governor General.

We are aware that an argument can always be made with reference to the language employed in Paragraph 5(4) of Fifth Schedule. It is to the effect that, "all Regulations made under this Paragraph shall be submitted forthwith to the President" for his assent. When Paragraph 5(4) uses the word 'under this Paragraph', argument might run, that assent is necessary even when action is taken under Paragraph 5(1). This argument, however, has inherent flaw. If one looks at the language used in sub-paragraph (1) on one hand and the language used in sub-paragraphs (2), (3), (4) and (5), there cannot be any doubt that sub-Paragraph (4) only refers to the Regulations made under Paragraph 5(2) and not the Notification issued by the governor under Paragraph 5(1). When the Laws made by Parliament/State Legislature apply to Schedule areas unless directed by the Governor that they would not apply, if one reads Paragraph 5(4) as requiring the Notification issued by Governor under Paragraph 5(1) to be assented to by the President of India, it would mean that all the Laws made by the Parliament/Legislature would continue to apply and the Governor would have no authority to modify the Laws in their application to scheduled areas. That was not the intention of the Constitution makers. When Paragraph 5(4) refers to 'all Regulations made under this Paragraph', it only means the Regulations made under Paragraph 5(2). It would not certainly include the Notification issued by the Governor under Paragraph 5(1). Therefore, we hold that the impugned Notification issued by the Government vide G.O.Ms.No.193, dated 17.04.2002 does not suffer from any vice or invalidity by reason of not being assented to by the President of India under Paragraph 5(4) of Fifth Schedule to Constitution of India.

In Re Point Nos.2 and 3

The term 'Collector' or 'District Collector' is not defined in Delegation Act or Regulation I of 1959 or any of the relevant Laws

specially made for and enforced in the schedule areas. Section 3(11) of the General Clauses Act, 1897 (Central Act No.10 of 1897) defines the 'Collector' means in a Presidency Town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the Chief Officer incharge of Revenue Administration of a District. Section 3(6) of A.P.General Clauses Act, 1891 (A.P. Act No.1 of 1891), in Section 3(6) defines that 'Collector' includes Special Officer, who for the time being is authorized to be so. Section 3(8) of the State General Clauses Act defines 'District Collector' means the Chief Local Officer incharge of Revenue Administration of a District. Thus, the Officer who is Chief Officer incharge of Revenue Administration of a District is District Collector and when such powers are conferred on an Officer who is authorized to exercise the powers of the Collector, such officer also comes within the definition of a District Collector.

In State of Andhra Pradesh, the Revenue Administration of the District including the law and order, taxation, development, welfare was entrusted to the overall supervision of the District Collector. This was found to be onerous as the pace of economic development increased. Hence, so as to provide for delegation of powers of the District Collectors to Joint Collectors and other officers, like District Revenue Officers, Personal Assistants to Collectors, the State enacted Act No.XXXII of 1961, namely, Delegation Act. This Act contains five sections. Section 2 defines 'Law' means any enactment, Ordinance, Regulation, rule, bye-law, order or other instrument relating to a matter enumerated in List II or List III in the Seventh Schedule to the Constitution of India and having the force of law in any part of the State of Andhra Pradesh. Section 3 empowers the State Government to authorize Joint Collector or any other officer of the State Government not below the rank of Deputy Collector to exercise all or any powers vested by or under any law in the District Collector. As per the two provisos under Section 3, authorization of a Joint Collector or Revenue Officer to exercise powers of the Collector does not divest 'District Collector' from exercising powers in the cases as he deems fit and when once the District Collector exercises the powers, the other authorized officers shall not exercise powers. When an order is passed by the Joint Collector or other authorized revenue officer of the District, for the purpose of Appeal or Revision under relevant law, order so passed shall be treated as order of District Collector.

In exercise of their powers under Section 3, the Government of Andhra Pradesh issued G.O.Ms.No.77, dated 22.01.1968, accepting the proposals submitted by the then Board of Revenue for distribution of work to the Joint Collectors and Personal Assistants to Collectors. Be it noted, by that time, the Government had sanctioned one post of Joint Collector in the Senior timescale of Indian Administrative Service in each District

with a view to relieve the District Collector, from Revenue and civil supplies work and enable him to devote entirely to development work. While approving the distribution of work among District Collectors, Joint Collectors and other officers, the Government in G.O.Ms.No.77 *inter alia* issued the following orders.

(1) All correspondence in the Collector's Office shall be carried out in the name of the District Collector. Where any statutory power can be exercised only by the District Collector, as defined by Section 3(8) of the Andhra Pradesh General Clauses Act, the preliminary examination of a case may be made by the Joint Collector or the Personal Assistant, as the case may be, in accordance with the distribution of work now ordered, but the final order should be passed by the District Collector.

(2) The District Collector shall exercise general supervision over the work of both the Joint Collector and the Personal Assistant, and it shall be open to the Collector to call for any file dealt with by either of the two Officers aforesaid, and issue suitable instructions to guide them. In respect, however, of cases in which statutory functions have to be exercised by the Joint Collectors or the Personal Assistant, there should be no interference by the District Collector, but he may refer any such matter to the Board of Revenue for interference by way of revision if he deems it fit. In other matters, the District Collector shall be competent to review or revise the orders of the Joint Collector or the Personal Assistant, wherever necessary though normally he should see that the initiative and responsibility are effectively taken by the Joint Collector and Personal Assistant.

(3) The Joint Collector and the Personal Assistant should keep the District Collector informed of all important aspects of their work and personally discuss important matters with him and seek his instructions.

G.O.Ms.No.77 (which was amended from time to time) initially contained two appendices. Appendix-I consisted of three parts. The first part enumerates the subjects reserved for 'District Collector', second part lists the subjects reserved for 'Joint Collector' and the third part contains the subjects reserved for 'Personal Assistant to Collector'. Appendix II contains as many as 134 enactments relating to matters enumerated in List II and List III in the VII Schedule to the Constitution of India. As seen, various subjects are reserved for District Collector, which related to maintenance to law and order, public servants, civil supplies, planning and development, road transport authority, agency areas etc. Subjects reserved for Joint Collectors mainly dealt with the subjects reserved for State Legislatures under List II and List III of the Seventh Schedule to the Constitution of India. Item 15 of Part I of Appendix I deals with 'Agency' and enumerates ten Acts/Regulations reserved for District Collector.

These are (i) 'Agency Administration and Development', (ii) Agency Civil Road Works and Agency Minor Irrigation Works, (iii) A.P.Agency Rules, (iv) A.P.Agency Tracts Interest and Land Transfer Act, 1917, (v) A.P. Scheduled Area Debt Bondage Abolition Regulation, 1940, (vi) Tribal Area Regulation, 1359 Fasli, (vii) A.P.Schedueld Areas Land Transfer Regulation I of 1959,

(viii) A.P.Scheduled Area Money Lenders Regulation I of 1960,

(ix) A.P. (Scheduled Tribes) Debt Relief Regulation II of 1960 and

(x) A.P.Mahals (Abolition and Conversion into Ryotwari) Regulation, 1969.

As mentioned supra, part II of Appendix I of G.O.Ms.No.77 deals with subjects reserved for Joint Collector. Here also, item 9 enumerates eight Acts/Regulations under sub-heading 'Agency'. These subjects are the same, which are also reserved for District Collector. That is the reason why even in schedule areas, insofar as Revenue Administration is concerned, the Joint Collectors were also exercising jurisdiction with reference to the subjects, some of which were reserved for the District Collector. There is no dispute on this. As we presently see the Government of Andhra Pradesh issued various orders on the executive side applying the provisions of Delegation Act as well as the guidelines in G.O.Ms.NO.77, dated 22.01.1968. This can be justified under Para 2 of Fifth Schedule, which is to the effect that executive power of State extends to scheduled areas, subject to provision of Fifth Schedule. Be that as it may, some problems were faced insofar as the statutory powers conferred under Section 3(3)(a)(ii) of the Regulation. The Government could not delegate these powers to other senior All India Services (IAS) Officers posted in the schedule areas, and therefore, the impugned notification was issued under Section 3 of the Delegation Act read with para 5(1) of Fifth Schedule. Here, a brief reference to four Government Orders would be necessary.

After establishment of ITDAs in Adilabad, East Godavari, Khammam, Srikakulam, Visakhapatnam, Vizianagaram and Warangal Districts (cumulatively called as Agency Districts) for implementation of developmental programmes for tribals in sub-plan area, the Project Officers of ITDAs were vested with administrative control over agriculture, horticulture, live-stock farms, ashram schools. They exercised administrative control over Block Development Officers (re-designated as Assistant Project Officers in sub-plan areas) and all other staff in all Government Departments. This was done with a view to facilitate public coordination among all functionaries in tribal areas to meet the needs of tribals. To streamline administration, the Government issued G.O.Ms.No.434, General Administration (Spl.A) Department, dated 14.08.1986, whereunder, *inter alia* following orders were issued.

1. **The Project Officers of the Integrated Tribal Development Agencies who are in the Senior Time scale of IAS., shall be redesignated as Project Officer, Integrated Tribal Development Agency and Ex-officio Joint Collector (Tribal Welfare) and Additional District Magistrate.**
2. The Project Officers of the Integrated Tribal Development Agencies hold in a rank of Special Grade Deputy Collector or lower in rank than Senior Time scale of IAS shall be redesignated as Project Officer, Integrated Tribal Development Agency and Ex-officio Additional Joint Collector (Tribal Welfare) and Additional District Magistrate.
3. **Such of the powers as now exercised by the Collectors, Joint Collectors/District Revenue Officers as per G.O.Ms.No.77, Rev.dated 22.01.1968 and shown in the Appendix to this order shall be exercised by the Project Officers of Integrated Tribal Development Agencies in the Districts of Srikakulam, Vizianagaram, Visakhapatna, East Godavari, West Godavari, Khammam, Warangal and Adilabad insofar as the Tribal sub-plan area is concerned and necessary notifications etc. In this regard will be issued from the Revenue Department.**
4. **The Project Officers of the Integrated Tribal Development Agencies will be designated as Additional Agents so far as Agency Areas are concerned.**
5. Omitted
6. All Officers and staff in the sub-plan areas connected with regulatory and developmental functions shall be under administrative control of the Project Officer, Integrated Tribal Development Agency.
7. to 11 Omitted

(emphasis added)

As can be seen from the above orders of the Government, Project Officers were re-designated as Project Officers and ex-officio Joint Collectors (Tribal Welfare) and Additional District Magistrates. They were also designated as Additional Agents to Government. Be it noted that under para 3(3) of G.O.Ms.No.434, Project Officers of ITDAs in Agency Districts were exclusively authorized to exercise powers of the Collectors/Joint Collectors/District Revenue Officers (DRO) as per G.O.Ms.No.77, dated 22.01.1968 insofar as tribal sub-plan area is concerned. The Government also left it open to Revenue Department to issue necessary notification in this regard.

The next Government Order relevant is G.O.Ms.No.19, Revenue (W) Department, dated 08.01.1987. This is consequent to G.O.Ms.No.434. This was issued under Section 3 of Delegation Act partially amending relevant appendices (notifications) of G.O.Ms.No.77 authorising Project Officers of ITDAs to exercise all powers vested in

District Collectors. These powers also included the powers in relation to Regulation I of 1959. Then came impugned Government Order/Notification on 17.04.2002. A reading of the Government Order would show that the District Collector, Adilabad, requested the Government to amend the Regulation for giving statutory effect to the orders issued in G.O.Ms.No.434, dated 14.08.1986. In that context, the Government visualized that Section 3 of Delegation Act does not empower them to authorize Project Officers of ITDAs to exercise powers of District Collectors under the Regulation made under para 5(2) of Fifth Schedule. Accordingly, so as to modify the Notification issued in G.O.Ms.No.19 with a view to authorize the Project Officers to exercise the powers of District Collector (Agents to Government) in respect of 'agency laws', Notification was issued under Paragraph 5(1) of Fifth Schedule read with Section 3. The Notification reads as under.

NOTIFICATION[2]

In exercise of the powers conferred under Paragraph 5(1) of the Fifth Schedule to the Constitution of India read with Section 3 of the Andhra Pradesh District Collectors Powers (Delegation) Act, 1961 (Act No.XXXII of 1961) and in modification of the Notification issued in G.O.Ms.No.19, Revenue (W) Department, dated the 8th January, 1987, the Governor of Andhra Pradesh hereby authorize the Project Officers, Integrated Tribal Development Agencies, Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari, Khammam, Warangal and Adilabad Districts in so far as the Scheduled Area is concerned, to exercise all the powers vested in the District Collectors by or under the laws mentioned below:-

(1) The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation No.I of 1959)
(2) The Andhra Pradesh (Scheduled Areas) Money Lenders Regulation, 1960 (Regulation No.I of 1960)
(3) The Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1960 (Regulation No.II of 1960)
(4) The Andhra Pradesh (Scheduled Tribes) Debt Relief Regulation, 1970 (Regulation No.III of 1970)
(5) The Andhra Pradesh Mahals (Abolition and Conversion into Ryotwari) Regulation, 1969 (Regulation No.I of 1969)
(6) The Andhra Pradesh Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969 (Regulation No.II of 1969)
(7) The Andhra Pradesh Scheduled Areas Ryotwari Settlement Regulation, 1970 (Regulation No.II of 1970)

After giving anxious consideration to the submission made by learned counsel for petitioners, we are not able countenance the submission that on the express language of Section 3 of Delegation Act, the Governor could not have issued the impugned Notification under

Paragraph 5(2) or 5(1). It is no doubt true that Section 3(1) of the Delegation Act expressly makes the said Act applicable to the 'laws' made by Legislature in relation to entries in List II and List III of the Seventh Schedule to the Constitution of India. But the said provision by itself does not bar or restrict the power of the Governor to apply the same with modification as to its applicability and enforceability in agency areas as per Paragraph 5(1) of Fifth Schedule. Thus, by issue of Notification in G.O.Ms.No.19 initially and then by G.O.Ms.No.193, what has been done by the Governor is to apply Delegation Act to scheduled areas with the modification that the Delegation Act shall also apply to the laws/regulation made under Paragraph 5(2) of the Fifth Schedule. That is the reason why G.O.Ms.No.193 in its preamble clearly states that the Government decided to issue fresh Notification under Paragraph 5(1), which only means applying the Delegation Act to the scheduled areas with the modification that the said Act will apply to 'laws' in relation to the entries in List II and List III of the Seventh Schedule as well as the 'laws' made by Governor under Paragraph 5(2) of the Fifth Schedule. As already concluded supra, when the Governor applies a law made by A.P.State Legislature with certain modifications, the same does not require assent of the President of India under Paragraph 5(4) of Fifth Schedule.

The decision in **Ram Kirpal** (supra) is a case which deals with the scope of power of the Governor under Paragraph 5(2) and it is not an authority for the proposition that even Notifications issued by Governor under Paragraph 5(1) require a prior assent of the President of India. A reference may be made to the following passage from the Judgment.

> It was contended that the power to make regulations did not confer power on the Governor to apply any law. It was said that under Section 92 of the Government of India Act, 1935, the Governor could do so but under the fifth Schedule of the Constitution the governor is not competent to apply laws. This argument is without any merit for the simple reason that the power to make regulations embraces the utmost power to make laws and to apply laws. Applying law to an area is making regulations which are laws. Further the power to apply laws is inherent when there is a power to repeal or amend any Act, or any existing law applicable to the area in question. The power to apply laws is really to bring into legal effect sections of an Act as if the same Act had been enacted in its entirety.

Whether the Government cannot designate Project Officer, ITDA, as Additional Agent to Government in scheduled areas? This is point No.3 for consideration. It is convenient to take up this point along with point No.2, on which, we have concluded that by virtue of impugned notification, Section 3 of Delegation Act would also apply to scheduled areas as well as Regulations made under Paragraph 2 of Fifth Schedule.

'Law' in scheduled areas, of late, has attained the status of being an independent branch of legal studies, for obvious reasons, although all the laws made by the competent Legislature apply to scheduled areas and though a uniform system of administrative machinery is in existence in such areas. As a first step to understand this, which is relevant for the consideration, the history of legislation in scheduled areas, in brief, needs to be adverted to[3].

British Government took direct control of administration of country from East India Company in 1860. So as to curb lawlessness in agency areas and hill tracts, George Russel, first Member of Board of Revenue, with extraordinary powers was deputed. He was to restore normalcy and also make suggestions for ensuring 'law and order'. To have direct control over agency areas, District Collector was appointed as Agent to Government with all powers. Ganjam and Vizagapatnam Act, 1839, was enacted by the Governor General, who had power to make 'laws' entrusting administration of civil and criminal justice to the District Collector, who 'shall exercise the powers as Agent to the State Government concerned'. The State Government was given power to prescribe Rules for guidance of Agents and all the officers subordinate to him. Judicial powers in civil and criminal branches were also exercised by Agents, whose Judgments were appealable before High Court[4]. This statute only enabled control of scheduled areas to a limited extent in few areas.

Many doubts were raised regarding the Acts or Regulations, which are to be enforced in various areas because some of the parts in British India were never brought under the Acts or Regulations with regard to the jurisdiction of civil Courts and criminal Courts. Therefore, the Scheduled Districts Act, 1874 was enacted. Scheduled Districts were those mentioned in First Schedule to the Act and power was vested with the Secretary of the State for India to declare any other territory to be in scheduled district. Section 3 of the Act required local Government to issue Notification declaring enactments that are actually in force in scheduled Districts. Section 6 of the Act empowered local Government to appoint officers to administer civil and criminal justice and conduct administration and to regulate procedure of the officers. Section 7 provided that all Rules made earlier shall have force even after making 1874 Act. This Act also empowered the State Government to direct any officer to administer civil and criminal justice and it need not necessarily be the District Collector.

Agency Tracts Interest and Land Transfer Act, 1917 is an Act to regulate rate of interest and transfer of land in agency tracts. Section 2(b) thereof defined the term 'Agent' means 'Agent to the Governor' in the

Districts of Ganjam and Vizagapatnam and 'Government Agent' in the District of Godavari. Section 4 of 1917 Act prohibited the transfer of immovable property by a Member of hill tribe to a non-tribal person unless the previous consent of the Agent is obtained for such transfer. In exercise of the powers conferred under Section 6 of Scheduled Districts Act, Governor promulgated the A.P.Agency Rules, 1924 (Agency Rules, for brevity). Rule 3 thereof, provided that Collectors and District Magistrates of Agency Districts (under the designation of Agents to Government) shall be the Collectors, District Magistrates and District Judges within the Agency tracts in the respective Districts. He was vested with powers of Revenue Courts and the Agency Divisional Officers are vested powers of subordinate revenue courts. Agent to the Government is also given power to appoint any of his subordinates as Agency Munsiffs to exercise the powers as are vested in the District Munsiffs in the ordinary tracts of the State.

In 1949, Andhra (Telangana Tribal Areas) Regulation, 1359F was promulgated to regulate administration of the scheduled areas in the Telangana region. Section 2(a) defines 'Agent' means 'a person appointed by Government to be Agent. It also lays that where no person is appointed as Agent, Collector of the District should be Agent. In exercise of Section 4 thereof, Notified Tribal Areas Rules, 1949, were made by the Government. Rule 2 thereof is to the effect that the administration of a notified tribal area in respect of the matters covered by the Rules is vested in Agent, Assistant Agent and such other officers as Government may deem fit to appoint.

The excluded and partially excluded areas (scheduled areas) came directly under the governance of Governor under Section 92 of Government of India Act, 1935. These excluded and partially excluded areas became scheduled areas by virtue of the Scheduled Areas (Part 'A' States) Order, 1950 and Scheduled Areas (Part 'B' States) Order, 1950 issued by President of India. After the inauguration of constitution, in exercise of powers under Paragraph 6 of Fifth Schedule, the President of India issued scheduled areas (Part 'A' States) Order, 1950 declaring areas specified therein to be scheduled areas within the States specified in Part 'A' of First Schedule to the Constitution of India.

A feeble submission was made by one of the counsel that there is no specific notification issued by the Government designating the District Collector as Agent to Government and therefore, such power could not have been further delegated. This submission is devoid of any merit. As seen from above brief legislative history, 1839 Act, 1874 Act, 1917 Act and A.P.Agency Rules, 1924 (Agency Rules, for brevity) provided that the District Collector shall be Agent. It appears that right from the day when the scheduled areas were brought under British regime or

thereafter, District Collector is Agent to the Governor/Government. Agency Rules as well as Notified Tribal Areas Rules specifically recognise the District Collector as 'Agent'. For the sake of convenience, these provisions are summarised in a tabular form below.

Sl. No.	Year	Name of the Act/Regula-tion/Rule	Provision	Substance
1.	1839	Ganjam and Vizagapatnam Act	Section 3	The Administration shall be vested in the Collector and shall be exercised by him as Agent for the State Government.
2.	1882	Board of Revenue Resolution	-	Administration of Hill tracts was brought under direct control of the Government with Collector as Agent to Governor.
3.	1874	Scheduled Districts Act	Section 6	State Government is empowered to appoint officers to administer civil and criminal justice within the scheduled Districts and regulate the procedure.
4.	1917	Agency Tracts Interest and Land Transfer Act	Section 2(b) (Definition of Agent)	Agent is defined as 'Agent to Governor' and 'Government Agent' in Godavari Districts.
5.	1924	A.P.Agency Rules	Rule 3	(i) The Collector under the designation of Agent exercises powers of District Magistrates and District Judges. (ii) As per sub-rule (1-A) of Rule 3, the powers and functions of the Collector in Visakhapatnam can be conferred on the headquarters Sub-Collector or headquarters Deputy Collector who shall be Agent to Government.

6.	1949	AP.(Telangana Tribal Areas) Regulation	Section 2(a) (Definition of Agent)	'Agent' means 'the person appointed by the Government and that no person is appointed as Agent, the Collector of the District shall be Agent'.
7.	1359F	Notified Tribal Areas Rules	Rule 2	The administration of a Notified Tribal Area is vested in the Agent or Assistant Agent.

Under various laws, District Collector is under the direct control of the Governor and he acts as an Agent to the Governor. It is also clear that the authority to exercise powers of Agent to Government can also be conferred on such other officers under the over all control of District Collector cum Agent to the Government. By the time Governor of Andhra Pradesh promulgated Regulation I of 1959 in exercise of powers under Paragraph 5(2) of Fifth Schedule, there was considerable law governing scheduled areas. There were also various Rules and Regulations conferring exclusive civil, criminal jurisdiction and revenue administration on the Agent and Agency Courts. This was taken note of and the term 'Agent' is defined in Section 2(b) of Regulation I of 1959 as to mean 'a person designated by the State Government as an Agent to the Government in the Agency Districts'. The said provision reads as under.

> 2. (b) 'Agent' means the person designated by the State Government as an 'Agent to the Government' in the Districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam or Mahaboobnagar as the case may be;

On a plain reading of the above definition, it becomes clear that an Agent to Government need not always be a District Collector as was the case in some of the Rules and Regulations. For instance, under Agency Rules made under Scheduled Districts Act, 1874, the District Collector by Rule 3 was designated as Agent to the Government. Under Andhra (Telangana Tribal Regulation), 1359F, in the absence of appointment of an officer as Agent, the District Collector was to be an Agent to Government. In 1959 Regulation, however, the power is given to the State Government to designate any officer as an Agent to the Government, in which event, such officer designated or appointed as an Agent shall be authority for the purpose of the Regulation as well as for being an appellate authority under Section 3(3)(a)(ii) of the said Regulation.

This Court has already referred to the relevant Government Orders, which would show that after establishment of ITDAs, which were exercising control over all matters in sub-plan areas, Project Officers of ITDAs were designated as ex-officio Joint Collector (Tribal Welfare) and

Additional District Magistrates. These Project Officers were also designated as Additional Agents so far as Agency Areas are concerned. As is already noticed, Paragraph 3(4) of G.O.Ms.No.434 authorised these Project Officers to exercise powers vested in the District Collectors under various 'laws' including Scheduled Areas Land Transfer Regulation. Therefore, even by 1986, Project Officers were designated as ex-officio Joint Collectors and Additional Agents to Government in scheduled areas. Now by reason of the impugned G.O., these Project Officers in Agency Areas are designated as Additional Agents to the Government for the purpose of Regulation I of 1959. This does not in any manner violate law.

Section 2(b) of Regulation I of 1959 itself empowers the State Government to designate Project Officers of ITDAs as Additional Agents to Government. For the sake of convenience, these Project Officers were designated as Additional Agents though for all purposes, they are Agents to Government for the purpose of Regulation. The submission that the powers of the District Collector cannot be delegated to Project Officers under the present dispensation is without any merit and cannot be accepted. Therefore, on point Nos.2 and 3, this Court holds that by reason of the Notification, issued under Paragraph 5(1) of Fifth Schedule, Section 3 of the Delegation Act is made applicable to scheduled areas regulation made under Paragraph 5(2) of the Fifth Schedule and that any officer - in this case Project Officers of ITDAs; can be designated as Additional Agent to the Government. Such designation does not violate any law nor affects the rights of the citizens, who are regulated by various laws in scheduled areas.

In Re Point No.4

In some of the cases against the orders of SDC, appeals were filed by tribals before Project Officer, ITDA directly. In majority of the cases, when the appeals were filed in time or with some delay, the Agent to Government issued orders transferring the cases to Additional Agent who either dismissed the interlocutory applications for condonation of delay or issued notices of hearing to the petitioners. After receiving notices, writ petitions are filed challenging the jurisdiction of the Additional Agent to Government to entertain appeals under Section 3(3)(ii) of Regulation I of 1959. In these writ petitions, the counsel contends that under the Regulation or Agency Rules, the District Collector as Agent is not vested with the power to transfer cases to subordinate officers, especially, Additional Agent. It may be mentioned that on consideration of Points 2 and 3 supra, this Court has held that the Government Notification designating the Project Officer, ITDAs, as Additional Agent for the purpose of Regulation does not suffer from any vice. There cannot be

any doubt that after issue of impugned notification on 17.04.2002, Project Officers as Additional Agents can always entertain the Appeals under Section 3(3)(a)(ii) because he is the Agent for the purpose of Regulation and the for the sake of convenience, he is designated as Additional Agent. Be it also noted that, Project Officers at least from 1986 have been discharging the functions as Additional Joint Collector as well as Additional Agent to Government.

The question remains whether it is competent to the District Collector and Agent to Government to transfer cases pending before him and which were filed prior to 17.04.2002 when the Government issued the Notification under Paragraph 5(1) of Fifth Schedule read with Section 3 of Delegation Act. Under Section 3(2)(a) of the Regulation, Agent or Agency Divisional Officer or any other prescribed officer is competent to eject a person in possession of the property claiming under transfer and restore the same to the transferor or his heirs. As the impugned notification designated the Project Officer of ITDA as Additional Agent and as the term Agent includes Additional Agent, the Project Officers also exercise original jurisdiction on par with the District Collectors. In such an event, needless to say against order of ejectment passed by Agent or Additional Agent in exercise of their original jurisdiction, an appeal would lie under Section 3(3)(a)(i) to the State Government. Therefore, if any of the matters are pending before District Collector where he himself is exercising original jurisdiction, there cannot be any objection to transfer these cases to Additional Agent. To make it more clear, this Court may reiterate that in all cases where the District Collector is Agent to Government himself has taken cognizance of an ejectment case on an application made by the tribal or has entertained an ejectment case on the information given in writing by public servant like SDT or *suo motu* has taken cognizance of such case, it is competent for the Agent to Government to transfer these cases either to Additional Agent or in appropriate cases to Agency Divisional Officer. It is relevant to mention that under A.P.Scheduled Areas Land Transfer Rules, 1969, the Agent or Additional Agent or Deputy Collector (Tribal Welfare) shall have power to give consent for the sale of immovable property, in execution of money decree against any member of a scheduled tribe under Section 3A and Section 10(2) of the Regulation.

In cases, where the Agent, Agency Divisional Officer or Deputy Collector (Tribal Welfare) exercise concurrent original jurisdiction in the matter of ejectment of a non-tribal or in the matter of giving consent for the sale of immovable property in execution of money decree against Member of scheduled tribe, it is always permissible to the District Collector as Agent to transfer cases pending before him to subordinate officers. A reference may be made to some of the relevant legal

provisions in this connection.

Under the Ganjam and Vizagapatam Act, 1839; the Scheduled Districts Act, 1874 and the Agency Tracts Interest and Land Transfer Act, 1917, the District Collector is Agent to Government. All other subordinate officers who exercise powers under these enactments are under the general control of the Agent. Sections 3 and 4 of 1839 Act, read as under.

> **3. Administration of Civil and Criminal justice in those Districts:-** The administration of civil and criminal justice (including the Superintendence of the Police), and the collection and Superintendence of the revenue of every description within the tracts of Country specified in the foregoing section which are included in any district shall be vested in the Collector of that District, and shall be exercised by him as Agent for State Government concerned.
>
> **4. Power to prescribe Rules for Government Agents:-** It shall be competent to the State Governments respectively concerned to prescribe such rules as they may deem proper for the guidance of such Agents, and of all the officers subordinate to their control and authority, and to determine to what extent the decision of the Agent in civil suits shall be final, and in what suits an appeal shall lie to the High Court and to define the authority to be exercised by the Agents in criminal trials, and what cases he shall submit for the decision of the High Court.

Though the Rules made by the Government under Section 4 of 1839 Act are not brought to the notice of this Court, a bare perusal of the above two provisions would show that all officers subordinate to Agent work under the control of Agent even while discharging duties in area of civil and criminal justice. Scheduled Districts Act, 1874 was mainly intended to notify enactments in force in scheduled districts. Apart from this, by Section 7 thereof, it is provided that all Rules prescribed by the Governor General in Council or local Government for the guidance of officers appointed within the scheduled districts shall be in force and shall continue to be in force unless otherwise directed. Apart from this, Section 6 of the Act enables Government to appoint officers and regulate the procedure. The said provision reads as under.

> **6. Appointment of officers and regulation of their procedure:-**
>
> The Local Government may from time to time-
>
> (a) appoint officers to administer Civil and Criminal justice and to superintendent the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts.
>
> (b) Regulate the procedure of the officers so appointed: but not so as to restrict the operation of any enactment for the time being in force in any of said

districts.

(c) Direct by what authority any jurisdiction, powers or duties incidental to the operation of any enactment for the time being in force in such district shall be exercised or performed.

Section 6(a) deals with appointment of officers to administer civil and criminal justice in scheduled districts. Section 6(b) deals with regulation of the procedures. It also provides that though it is competent for the Government to lay down guidelines in regard to the procedure to be followed, the same does not enable the Government to restrict the operation of any enactment for the time being in force in the District. Section 6(c) empowers the government to direct the authorities to exercise all jurisdiction powers or duties incidental for enforcement of an Act.

In exercise of powers under Section 6 of the Act, A.P.Agency Rules were promulgated. Rule 2(3) lays down that Agency Divisional Officers and Agency Munsiffs are subordinate to the Agent. Rule 3 further lays down that the District Collectors under the designation of Agents shall be Collectors, District Collectors, District Magistrates and District Judges. Agency Divisional Officers shall exercise powers in the sub-division as directed by the Agents. Agency Rules form a complete code dealing with civil judicial process in Agency Areas. Rule 11 deals with the power of the Agent to transfer any suit or appeal pending in another Court within the Agency tract in his District. The power to transfer suit pending in any other Court of equal or inferior jurisdiction as well as power to transfer a suit from the Court of Agency Munsiff to any other Agency Munsiff and power to transfer a suit or appeal to any Divisional Officer vests in the Agent. The important thing to be noticed is that under Rule 11(2), the Agent can transfer original suit or appeal pending in any other court of equal or inferior Court within District. On a true interpretation of Rule 3(1) read with Rule 11(2), it must be held that the power of the Agent to transfer suits and appeals takes in its fold the power to transfer appeals pending before him to an Additional Agent. The District Collector as Agent has exercised regulatory powers, illegality cannot be attributed to his action in transferring appeals pending before him to Additional Agent.

An integrated approach towards implementation of developmental programmes for tribals in agency areas is the main idea behind establishment of ITDAs. The Government issued G.O.Ms.No.433, General Administration (Spl.A) Department, dated 14.08.1986 (G.O.Ms.No.434 refers to this), introducing single line administration system in agency areas so that functionaries operating in sub-plan areas would meet the needs of tribals who look to a single agency for

redressing their grievances. This required conferment of powers and structural changes in the agency administration. To fulfil the same, G.O.Ms.No.434, dated 14.08.1986, was issued re-designating Project Officers of ITDAs. As this posed some problems in the matter of exercise of statutory functions, say for instance under the Regulation I of 1959, the Government issued G.O.Ms.No.19 paving the way to issue the impugned notification vide G.O.Ms.No.193 authorising Project Officers to exercise of powers vested in the District Collectors by or under the 'laws' *inter alia* Scheduled Areas Land Transfer Regulation. Thus, reading G.O.Ms.No.434 together with G.O.Ms.No.19 and G.O.Ms.No.193, it becomes clear that the Project Officers exercise jurisdiction as Agents to the government under the Regulation (Impugned notification also speaks of the same). About two months after issue of impugned Government Order, the Government of Andhra Pradesh in General Administration Department issued another Government Order being G.O.Ms.No.274, dated 15.06.2002, conferring the powers on Project Officers, in addition to the powers already conferred on them by earlier Government Orders. This was done to strengthen the administrative system in Agency Areas keeping in view the recommendations made by Dr.Marri Chenna Reddy Human Resource Development Institute, Hyderabad, wherein it was felt that so as to strengthen single line administrative system, Project Officers of ITDAs should be delegated with disciplinary powers. Paragraph 4 of G.O.Ms.No.274, dated 15.06.002, contains the orders of the Government. Paragraph 4(1) (2) and (5) are relevant for the purpose and need to be extracted.

> 4. Government after careful consideration of the matter and in accordance with the recommendation made by the State Level Workshop, issue the following orders:
>
> (1) The Project Officers of the Integrated Tribal Development Agencies who are in the Senior time scale of IAS continue to be redesignated as Projected Officer, Integrated Tribal Development Agency and Ex Officio Joint Collector (Tribal Welfare) and Additional District Magistrate.
>
> (2) The Project Officers of the Integrated Tribal Development Agency holding a rank of Special Grade Deputy Collector of lower than Senior time scale of IAS shall continue to be redesignated as Project Officer, Integrated Tribal Development Agency and Ex Officio Joint Collector (Tribal Welfare) and Additional District Magistrate.
>
> (3) Omitted
>
> (4) Omitted
>
> (5) The Project Officers of the Integrated Tribal Development Agencies shall continue to be designated as Additional Agents so far as agency areas are concerned.

Therefore, this Court has no doubt that when the Additional Agents (Project Officers) exercise powers of District Collectors (conferred

on them under G.O.Ms.No.77, dated 22.01.1968) under the Regulation, they exercise concurrent jurisdiction and so as to facilitate speedy disposal of cases and achieve maximum efficiency in the Agency Administration, if the Collector transfers pending appeals, the same cannot be invalidated nor faulted. Such action of the District Collector in transferring cases to Project Officers acting as Additional Agents is justified in view of various statutes in force in the agency areas but also various Government Orders. The same is in tune with the purpose with which the Government issued various orders to ensure efficient single line administrative system, which is need of the hour. We accordingly hold on point No.4.

Summary of the findings:

1. The impugned notification issued vide G.O.Ms.No.193, dated 17.04.2002 does not suffer from any vice or invalidity by reason of not being assented to by the President of India under Paragraph 5(4) of Fifth Schedule to the Constitution of India.

2. By reason of impugned Notification issued by Governor of Andhra Pradesh under Paragraph 5(1) of Fifth Schedule, Section 3 of Delegation Act is also applicable to the Regulation I of 1959 made by the Governor under Paragraph 5(2) of Fifth Schedule.

3. There is no illegality or infirmity in Government of Andhra Pradesh designating Project Officers of Integrated Tribal Development Agencies as Additional Agent to Government in Scheduled Areas for the purpose of Regulation I of 1959, and exercise powers of Agents under the said Regulation.

4. The Additional Agent to the Government (Project Officer, ITDAs) is subordinate to the District Collector, though he exercises concurrent jurisdiction under Regulation I of 1959 and therefore, it is competent for the District Collector to transfer cases pending before him including the Appeals under Section 3(3)(a)(iii) to the Additional Agent.

Conclusions

In the result, W.P.Nos.3841, 11731, 11732, 11733, 14138, 23892, 4660 and 26029 of 2005 and W.P.Nos.462 and 13775 of 2006 are dismissed. However, the petitioners in these cases are given liberty to prefer a Revision under Section 6 of Regulation I of 1959 within a period of three weeks from the date of receipt of copy of this order. As and when such Revisions are filed, the Government may entertain the same and pass appropriate orders after giving notice to the petitioners and all other

aggrieved parties. Insofar as W.P.Nos.13800, 18900, 23097, 26412 and 26417 of 2006; 1427, 1959, 2232, 2268, 1620, 21632, 2688, 3951, 4258, 4334, 4494, 4854, 3642, 6004 and 6316 of 2007, which are filed against the notice of hearing issued by respective Additional Agents, these cases are dismissed giving liberty to the petitioners to pursue their appeals before the respective Additional Agents, who are directed to dispose of the Appeals within a period of eight weeks from the date of receipt of copy of this order. Insofar as W.P.No.1241 of 2005, which is filed against the order of the Additional Agent in I.A.No.14 of 2004, dated 18.12.2004, refusing to condone the delay of eight and half years is concerned, we see no ground to interfere with the same. The same is dismissed. There shall be no order as to costs.

_____

(V.V.S.RAO, J)

_____

(G.V.SEETHAPATHY,J)

09.08.2007.

Note: LR copy be marked.
(By order)
pln

---

[1] AIR 1970 SC 951 (para 25)

[2] Issued vide G.O.Ms.No.193, dated 17.04.2002

[3] This is a summary taken from the Division Bench Judgment of this Court in **Gundla Lakshmana Murthy v Government of Andhra Pradesh [**1971 (2) AnWR 123**]**, which upheld the validity of Regulation I of 1959 and **Vemana Somalamma v Deputy Collector, Tribal Welfare, Rampachodavaram** [AIR 1993 AP 312 (FB)]

[4] In exercise of powers under Section 4 of 1839 Act, Rules were framed in G.O.Ms.No.931, dated 24.07.1960, laying down procedure for trail of cases under Code of Criminal Procedure.